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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

N.S., Petitioner, v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; ORANGE COUNTY SOCIAL SERVICES AGENCY et al., Real Parties in Interest.	G057522 (Super. Ct. No. 18DP0377) O P I N I O N

Original proceedings; petition for a writ of mandate to challenge an order of the Superior Court of Orange County, Anthony C. Ufland, Judge. Petition denied.

Sharon Petrosino, Public Defender, Kenneth Norelli, Assistant Public Defendant, and Brian Okamoto, Deputy Public Defender, for Petitioner.

Leon J. Page, County Counsel, and Karen L. Christensen, Deputy County Counsel, for Real Party in Interest.

Law office of Harold LaFlamme and Linda O'Neil for minor.

* * *

N.S. (mother) challenges by a petition for a writ of mandate the juvenile court's order setting a hearing to select a permanent plan for her now 15-month old daughter, A.S.; that hearing involves potential for termination of mother's parental rights. (Welf. & Inst. Code, § 366.26; all further statutory references are to this code.) While still in the neonatal intensive care unit, A.S. was removed from mother's custody within two days of her birth in April 2018, due to substantial risks posed by mother's mental health problems,[1] which included her inability to provide for A.S.'s care during mother's involuntary hospitalization under section 5150.

Mother has made progress in stabilizing her mental health, particularly after she began taking new medication in November 2018. She now contends the court erroneously determined, as a prerequisite for setting the permanent plan selection and implementation hearing, that the Orange County Social Services Agency (SSA) offered her reasonable reunification services. Minor's counsel opposes mother's petition.

Born with Down syndrome, A.S. was also diagnosed with what proved to be short term respiratory issues, a heart valve defect that required no immediate medical intervention, and what at first appeared to be a club foot condition, but turned out to be a curvature related to Down syndrome. A.S.'s foot issue did not require immediate attention and it was recommended she undergo further evaluation at age four.

Mother argues SSA failed to meet its own recommendation in her case plan to provide her "any recommended education in order to prepare the mother to meet the

[1] Mother has a bipolar diagnosis.

child['s] special needs." She contends this alleged failure interfered with her case plan obligation to "demonstrate adequate knowledge of [her] child's special needs, and [to] further demonstrate an ability to provide, or obtain any specialized care the child requires to address Down Syndrome, club feet, and any other need identified."

In particular, mother contends that because she was terminated from a referral by SSA to the Orange County Down Syndrome Association, the information SSA provided to her concerning Down syndrome, including reading material and hands-on assistance given by a one-on-one parenting coach and others, was insufficient to constitute reasonable services.

We disagree. Reviewing the juvenile court's ruling under the substantial evidence standard, we conclude the court could determine the services mother received were reasonable. We therefore decline to issue the requested writ of mandate to overturn the court's ruling.

SCOPE OF REVIEW

We limit our review and our recitation of the background facts to those immediately pertinent to mother's challenge to the reasonableness of SSA's services regarding A.S.'s Down syndrome diagnosis. We recognize minor's counsel suggests that, regardless of A.S.'s special needs, mother suffered from a "threshold inability or unwillingness to meet her child's basic survival needs," including bonding through eye contact and physical closeness in supervised visits that mother regularly cut short, and attentiveness to caretaker reminders such as keeping A.S. upright during feeding due to her reflux issues. Nevertheless, we acknowledge mother's invocation of important scope of review observations in recent authority.

"To incorporate an assessment of the likelihood of reunification in reviewing a reasonable services finding would be unfair to a parent who did not receive court-ordered services tailored to mitigate risk to the child and allow the child's safe

return to the care of his parent." (*In re. M.F.* (2019) 32 Cal.App.5th 1, 18.) Consequently, "[t]he reviewing court addresses the issue of reasonable services independently of the issue [of] whether there is a substantial probability the child will be returned to the physical custody of the parent [if an] extended time period" of services is ordered. (*Ibid.*, see *T.J. v. Superior Court* (2018) 21 Cal.App.5th 1229, 1249.)

It is also true, however, that by constitutional decree, lower court rulings may only be overturned for a miscarriage of justice, necessarily implying a harmless error analysis if there is found to be any error. (Cal. Const., art. VI, § 13.) As we discuss, we find no error here. Accordingly, for the sake of brevity, we turn directly to the services mother received in relation to A.S.'s Down syndrome diagnosis and to mother's response in the reunification period regarding those services.

FACTUAL AND PROCEDURAL BACKGROUND

Within two weeks of A.S.'s birth, SSA provided service referrals for mother that included the agency's Family Resource Center, parent mentoring, and a parenting group. Mother also received a referral for parent education services to be fulfilled through a Boys and Girls Club program. SSA's social worker additionally provided mother information about Down syndrome from Children's Hospital of Orange County (CHOC) to help mother "better understand the conditions, [A.S.'s] needs, and general information."

According to the worker's written report, "mother expressed she understood the recommended services." The worker also provided mother the contact information for two social workers. Mother signed her case plan, which required her to "demonstrate adequate knowledge of your child's special needs, and further demonstrate an ability to provide, or obtain any specialized care the child requires to address Down Syndrome . . . ."

Mother continued to deny A.S. had Down syndrome, but genetic test results confirmed the diagnosis. The social worker and A.S.'s caregiver at her emergency shelter home reviewed the genetic test results with mother. They also advised mother about the common characteristics of Down syndrome children and encouraged her to read the materials she had been provided about Down syndrome.

When A.S.'s emergency shelter home placement ended and longer term local foster home placement with caregivers who would commit to a child with Down syndrome fell through, the juvenile court authorized out-of-county placement for A.S. with a family in Riverside County. That family agreed to facilitate A.S.'s continuing CHOC visits and mother's twice weekly visitation in Orange County.

In June 2018, the juvenile court sustained jurisdiction over A.S. based on mother's inability or failure to protect A.S. arising from mother's severe mental health problems and based on mother's failure to provide or arrange care for A.S. (§ 300, subds. (b), (g).) The court approved and adopted mother's case plan, including mother's obligation to educate herself about Down syndrome in order "to provide . . . or obtain any specialized care" for A.S. if needed. The case plan called for SSA to assist mother in "benefit[ing] from services, including but not limited to, mental health treatment and assessment, medication management, counseling, parenting education, [and] any recommended education . . . to prepare . . . mother to meet [A.S.'s] special needs . . . ." Specifically, the court required SSA "to inquire if Regional Center has a parenting class regarding Down Syndrome."

SSA inquired of the Regional Center about services for A.S. and learned that "all services, including intake," were "required to take place in placement city/surrounding area due to funding issues." Mother signed an "Appointment of Educational Representative" form for the child's foster parents "to be allowed to move forward with assessment and services for [A.S.]" through the Inland Valley Regional Center. Those services included an evaluation of A.S., which resulted in an hour of

in-home weekly physical therapy. Mother told the social worker "she could not go out there" to take classes at the Inland Valley Regional Center.

The social worker gathered information about whether the Regional Center of Orange County (RCOC) offered services "specifically designed for parents of children with Down syndrome" and learned that "specific Parent Education would often take place in a one on one setting between the parent and the RCOC service coordinator with the child present." SSA confirmed with the RCOC that parenting classes there required the child to be an "active RCOC consumer," which A.S. was not due to her Riverside County placement. Consequently, RCOC services were not available to mother.

During this time A.S. continued to suffer from reflux. Her gastroenterologist's office barred mother in late July 2018 from attending further appointments because of her "aggressive and inappropriate" behavior. A.S. was also seen at CHOC's Neurology Epilepsy Center. That doctor directed A.S.'s foster parents to watch for abnormal movements because children with Down syndrome may have seizures beginning around nine months of age. The doctor added they could begin earlier and occur at any time.

Beginning in August 2018, the social worker arranged for in-home parenting coaches to attend mother's visits with A.S. The program goals included learning to care for A.S.'s special needs. Mother responded to the referral, "No thank you. I do not need help." A coach nevertheless worked with mother intermittently until late October, when she closed the referral because she had not seen mother for a month and mother was not returning her phone calls.

In an August 2018 visit with A.S., mother reported to the social worker that she had been reading the information she had been given about Down syndrome. Mother asked the social worker, "Is the Down syndrome getting worse?" The social worker explained that "it isn't something that gets better or worse," but rather results from an

extra chromosome, and therefore, "as [A.S.] develops we will see how it impacts her," but "all children are different."

The social worker referred mother to a monthly parenting education and support meeting through the Orange County Down Syndrome Association (DSA). Mother, who was homeless at the time, arrived at the August 2018 meeting two hours late, at 9:00 p.m., with her sweater covered in grass; her legs and feet were also dirty, as if she had been walking in mud. Staff at the program reported that mother smelled and made "several other families . . . uncomfortable"; staff further stated her inability to have A.S. present during meetings would adversely affect "the dynamics of the group." A.S.'s social worker said she would discuss the issue with mother and ask her "to hold off on the meetings until we move further in the reunification process and [mother] could have the child present with her for the meeting like the other families involved." When questioned about this, mother confirmed she agreed not to attend the meetings, but noted she obtained several books from the DSA library.

In October 2018, mother communicated to the social worker by text message that she cancelled a week of visits with A.S. because she believed she was having a nervous breakdown. In early November 2018, mother reported she had changed her medication and it "seem[ed] to be working really well for her," but she nevertheless was no longer attending school after "security kicked me out because I have the cats and refuse to leave them outside of the classroom." She also stated that she did not like the in-home parenting program the social worker obtained for her. Mother later indicated she had researched parenting classes and decided to take them through the Minnie Street Family Resource Center in January 2019.

At the periodic review hearing held in March 2019, the juvenile court heard mother's testimony, the testimony of two social workers, and the court admitted SSA's reports concerning mother's lack of progress toward reunification. The court expressed particular concern that mother's visits with A.S. dating back to November 2018 all

seemed to end early, and mother never accepted the extra time for visitation that was offered to her. The court could not find a substantial likelihood that A.S. would be returned to mother's unmonitored care in three months at the 12-month review hearing; the court observed that mother could not "get through an entire two-hour visit [without] leaving early." Concluding mother had not made substantial progress toward reunification with A.S. despite reasonable services offered by SSA, the court terminated services and set the permanent plan selection and implementation hearing for July 23, 2019.

DISCUSSION

Mother challenges the sufficiency of the evidence to support the juvenile court's conclusion SSA offered her reasonable reunification services. She contends the agency "failed to provide [her] with services specific to parenting her special needs child."

When a child under age three is removed from parental custody, reunification services are generally limited by statute to six months (§ 361.5, subd. (a)(1)(B)) because, '"[g]iven the unique developmental needs of infants and toddlers, moving to permanency more quickly is critical."' (*Daria D. v. Superior Court* (1998) 61 Cal.App.4th 606, 612.) "[V]ery young children . . . require a more timely resolution of a permanent plan because of their vulnerable stage of development." (*Ibid.*) By statutory command, however, it is also true that if "reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing." (§ 366.21, subd. (e)(3).) Consequently, the remedy for unreasonable services "is to extend the reunification period, and order continued services." (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 973-974.)

"In reviewing the reasonableness of the services provided, this court must view the evidence in a light most favorable to the respondent. We must indulge in all

legitimate and reasonable inferences to uphold the verdict. If there is substantial evidence supporting the judgment, our duty ends and the judgment must not be disturbed." (*In re Misako R.* (1991) 2 Ca1.App.4th 538, 545.) "In almost all cases it will be true that more services could have been provided more frequently and that the services provided were imperfect. The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances." (*Id*. at 547.)

Echoing the First District's observation in *T.J. v. Superior Court* that the "commonplace notion" regarding the impossibility of perfect services "obscures the real issue . . . , which is whether the limited steps [SSA] took were adequate to meet this family's particular needs" (21 Cal.App.5th at p. 1249), mother argues the evidence here does not support the conclusion SSA provided reasonable services to aid her in addressing A.S.'s Down syndrome. Mother complains SSA "never saw its referrals specifically tailored to this goal to fruition." The evidence shows, however, that mother thwarted this objective despite SSA's reasonable efforts.

SSA met the juvenile court's only express direction regarding Down syndrome services, which was to inquire whether parenting classes on that subject were offered at the Regional Center. SSA learned *no* services were available for mother at the RCOC because A.S.'s placement was outside the county; SSA further confirmed that mother would not travel to Riverside County for any services offered at the Inland Valley Regional Center. The social worker nevertheless ascertained that the RCOC used a "one on one setting" for its parent education services, and she reproduced that model with individualized in-home coaching for mother.

Considering this extra effort, in conjunction with the Down syndrome material the social worker ensured mother received from CHOC, the reading material mother said she obtained from the DSA, and the individualized efforts the social worker, the monitors, and the caregivers made with mother through their hands-on interaction

with her, we conclude SSA provided mother reasonable services to meet her case plan goal to learn about Down syndrome in order "to provide . . . or obtain any specialized care" for A.S., if needed.

We believe that the social worker went the proverbial "extra mile" to provide the appropriately ordered Down syndrome resources by making herself available through text messaging. Mother also had, until her own conduct prevented it, the opportunity to attend A.S.'s medical appointments. There, for example at a gastroenterology appointment, she would have learned to watch for syndrome-related seizures. The point is that much of learning about parenting—quite apart from whether the child has special needs—arises in the moment. The juvenile court reasonably took into consideration that mother deprived herself of teachable moments not only by being barred from the gastroenterologist's office, but also by cutting short her visits with A.S. By curtailing her visits and failing to take advantage of the extra visitation SSA offered, mother lost the chance to gain insight into A.S.'s condition and her particular needs.

Mother contends the evidence did not show her in-home coach was trained to provide services regarding Down syndrome specifically, but we must view the evidence in the light most favorable to the court's ruling. The coaching program's express goal of helping mother meet her child's special needs supports an inference the coach could help mother do so.

We observe that the threshold to educate mother about Down syndrome was low. For instance, mother believed A.S. should be sitting up by the time she was four months old, but the visitation monitor informed her this milestone usually came later, especially for children with Down syndrome. Early on, the emergency shelter caregiver stressed the importance of keeping A.S. upright after feeding because her reflux issues were related to Down syndrome, and nothing in the record suggested otherwise. Mother never seems to have listened. The social worker also tried to alert mother that Down syndrome is not like an illness that gets better or worse; it is a chromosomal

abnormality that must be addressed according to A.S.'s particular circumstances. But as discussed, mother deprived herself of individualized learning opportunities the social worker and others proved themselves ready to provide. Ample evidence supports the juvenile court's conclusion SSA offered mother reasonable services related to A.S.'s Down syndrome diagnosis.

DISPOSITION

Mother's petition for a writ of mandamus is denied.

GOETHALS, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.